
(2000) 12 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13919 of 1997

Ex-Subedar Sardara Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Pension Regulations for Army, 1961 — Regulation 179

Citation : (2000) 12 P&H CK 0059

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.S. Sangwan, for the Appellant; Mrs. Ranjana Sahi, A.S.C., for the Respondent

Judgement

R.L. Anand, J.—Ex-Subedar Sardara Singh has filed the present writ petition under Articles 226 and 227 of the Constitution of India against the respondents and he has prayed that a writ of mandamus be issued against the respondents to give him the benefit of disability pension alongwith interest at the rate of 18%.

2. The case set up by the petitioner is that he was enrolled in the Army in the year 1964. At the time of his enrolment, he was medically examined. He was found hale and hearty and he was placed in category "A". He served the army and participated in the wars of 1965 and 1971. He was posted in the field service. Unfortunately, he suffered the diseased "N1DOM" which occurred to him when he was serving the army. It is a mental disease. The petitioner was treated in the military hospital at Jaipur and military hospital at Pathankot. The petitioner was medically examined in the year 1992 by the Medical Board which held its meeting on 21.3.1992 and the petitioner was placed in medical category "C" permanent and he was relieved from service. The Medical Board opined that the disability of the petitioner was more than 20 per cent. The petitioner was discharged from the army with effect from 30.4.1992 due to his disability which was more than 20%. With this background, the petitioner has made a claim for

disability pension which was rejected by the respondent- authorities on two occasions. So much so, the petitioner even filed an appeal which was also rejected. He gave a notice on 16.7.1997 but no action was taken on it. Hence the present writ petition.

3. The notice of the writ petition was given to the respondents who filed the reply and denied the allegations. According to the respondents, the petitioner, of course, joined the service on 16.4.1964 but he was discharged on 30.4.1992 after completing more than 28 years of service. The maximum service tenure of Subedar in the army is 28 years. Accordingly, the petitioner was discharged on completion of the service limit. It was also admitted by the respondents that petitioner was placed in low medical category "C" temporary with effect from 12.3.1992 for a period of six months. Being a low medical category, the petitioner was brought before the Release Medical Board before his discharge from the service and the Release Medical Board held its meeting in Military Hospital Jodhpur and found the petitioner suffering from NIDOM and opined that the disease is not connected with the service. Rather it is a genital in nature. However, the disability of the petitioner was assessed at 20% for a period of two years. With this broad defence, the respondents have prayed for the dismissal of the writ petition.

4. I have heard Shri R.S. Sangwan, learned counsel appearing on behalf of the petitioner and Ms. Ranjana Shahi, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

5. The principal contention raised by the learned counsel for the respondents is that the petitioner was boarded out from the service after completion of 28 years which is normal tenure of Subedar and since the petitioner has not suffered any loss, therefore, he is not entitled to the benefit of disability pension. The argument is not acceptable to this Court. Even if it is assumed for the sake of arguments that the petitioner had completed 28 years of service, required to be served for a Subedar, still, he is entitled to a the benefit of disability pension in view of Regulation 179 of the Pension Regulations For the Army, 1961, Part-I which contemplates that even if a military personnel is retired or discharged on completion of service limits, still he is entitled to the benefit of the disability pension. For the sake of advantage Regulation 179 can be quoted in the following manner :-

"An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement if the accepted degree of disability is 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/

service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from, duty on account of that disease.

Note: In the case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not effect his title to the disability element under the provision of the above regulation."

There is no controversy between the parties that at the time of entering into army service the petitioner was subjected to medical test and there is no mention that at the time of enrolment in the military service the petitioner was suffering from any disability or disease. There is nothing to suggest that the disability suffered by the petitioner is such which could not have been detected at the time of entering into service.

6. In this view of the matter, this Court is of the opinion that the petitioner is entitled to the benefit of disability pension.

Resultantly, the writ is allowed and directions are given to the respondent-authorities to release the benefit of disability pension to the petitioner with effect from 1.5.1992 within three months from the date of the receipt of the copy of this order, failing which, the petitioner shall also be entitled to interest at the rate of 12 percent. There shall be no order as to costs. The petitioner shall appear before the re-survey Medical Board as and when called upon by the respondents.

7. Petition allowed.